

APPEAL NO. 030624  
FILED APRIL 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 12, 2003. The hearing officer determined that the appellant (carrier) did not specifically and adequately contest compensability (but did dispute timely reporting); that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that the carrier is not relieved of liability pursuant to Section 409.002 because the claimant timely notified his employer of his injury; and that the claimant had disability from June 7, 2002, through the date of the CCH.

The carrier appeals, contending that the claimant did not report that his "alleged injury" was job related within 30 days and that the carrier "adequately contested compensability" (by showing that the claimant did not timely report a job-related injury). The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

One of the issues in this case is "Did the Carrier specifically contest compensability pursuant to [Section] 409.022 and [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2] Rule 124.2. The hearing officer determined that the carrier "did not specifically and adequately contest compensability," but in her Statement of the Evidence comments that the carrier's timely filed Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) "is not adequate to dispute compensability, it is only effective in dispute [sic] timely reporting." In Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002, and other cases since, the Appeals Panel has held that the right to contest compensability includes the right to assert a defense under Section 409.002 (timely notice of the injury to the employer). In that the hearing officer found, and the case turns, on whether the claimant gave timely and adequate notice of a work-related injury, we reform the hearing officer's determinations and decision to say that the carrier did not specifically and adequately contest an injury in the course and scope of employment but did timely contest compensability by specifically and adequately disputing timely notice of an injury to the employer.

The claimant, a "set up operator," testified that he "got a catch" in his back on \_\_\_\_\_, removing a cylinder. The claimant finished his shift that day and testified that the next day, he told his supervisor, Mr. OM, that he "pulled his back the day before while changing out a cylinder." According to the claimant, Mr. OM asked him if he wanted to see a doctor and that the claimant replied no, that he thought it was just a pulled muscle and that it would work out. Mr. OM does not deny that conversation, however, no accident report was completed. Some evidence exists that Mr. OM at

some point told the employer that the claimant reported an injury; however, the carrier obtained an affidavit dated January 26, 2003, from Mr. OM, which stated that the claimant "mentioned in passing this [sic] his back was hurting. However, at no time did he say that the back pain was job-related." The carrier contends that the claimant failed to adequately notify the employer of his injury, that the claimant failed to specify that the back pain was work related, and that no accident report was filed. The hearing officer found that the claimant did timely notify his employer of his injury pursuant to Section 409.001.

The hearing officer had all the facts before her and judges the credibility of the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. In this case the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order as reformed to show a timely contest of compensability are affirmed.

The true corporate name of the insurance carrier is **ADVANTAGE WORKERS' COMPENSATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Roy L. Warren  
Appeals Judge